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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/472,743 12/27/99 FOUS

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EXAMINER

QM12/1208

ROBERT M. FOUS  
2706 MOON MOUNTAIN DRIVE  
EUGENE OR 97403

WELCH, G

ART UNIT

PAPER NUMBER

3765

DATE MAILED:

12/08/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
09/472,743

Applicant(s)

Fous

Examiner  
Gary L. Welch

Group Art Unit  
3765



☒ Responsive to communication(s) filed on amendment filed on 8/29/2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 1-3 is/are pending in the applicant

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-3 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☒ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments and amendment filed, August 29, 2000, has been reviewed and considered. Claims 4 through 7 are canceled via the amendment and amended claims 1-3 remain in the case. The applicant has presented arguments on pages 1-4 of his response to the first Office Action mailed May 23, 2000. The arguments are summarized below with an examiner's response following the arguments.

Firstly, the applicant states that his invention increases the closing leverage of a glove onto a ball by the alignment of lines of force of all four fingers closing the outer edge of the finger portion of the glove towards the thumb edge. This is accomplished by a 90 degree angle formed between the thumb and the index finger and where the hand is positioned at a 40 degree angle with respect to the outershell of the glove. The applicant states that the prior art does not disclose the above stated critical orientation and alignment of the hands and fingers.

Secondly, the applicant's invention has a hollow center in the web/pocket area in lieu of a solid material ball contacting surface. The applicant claims that a hollow center enables the ball to be securely trapped and held without the ball ricocheting back out of the glove since the ball receiving contacting surface is substantially reduced.

Lastly, the applicant states that the prior art references to Latina '176 and '219 are to a first basemen's glove or to a catcher's mitt and are not related to his fielder's glove.

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In response to the first and second arguments above and as understood by the examiner, the prior art lacks the combination of a 90 degree angle formed between the thumb and index finger, the positioning of the hand at a 40 degree angle with respect to the outershell of the glove and a hollow center in the web/pocket area. However, as claimed, the examiner is unclear what is meant by the recitations "plus or minus" in claim 1. Therefore, the previous prior art appear to read onto the amended claims as currently stated. In response to the last argument pertaining to the relationship of the prior art as not being a fielder's glove, there is nothing unique in the claims that structurally prevent the use of a first basemen's glove or a catcher's mitt in rejecting the claims.

### *Specification*

2. A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because the numerous additions to the specification makes the case difficult to read and difficult to print when the case becomes allowable.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the

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amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

*Claim Objections*

3. Claim 1 is objected to because of the following informalities:

line 7: Delete the quotation marks around the word "finger". Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 1, the use of the recitation "plus or minus" (5 occurrences) renders the claim language as not enabling. The "plus or minus" recitations allow for hand to be positioned on the outershell of the glove over a 90 degree span, the thumb compartment rotated forward over a 50 degree span, a span of up to 180 degrees between the thumb and index finger. The specification

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does not clearly described what is meant by these recitations and therefore is not enabling to perform the claimed critical functions of the invention.

6. Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended claim 1 states the web/pocket area of the outershell is 30 to 50% greater in surface area than prior art gloves. The originally filed specification did not contain this claimed subject matter and is therefore considered new matter.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the "plus or minus" recitations are unclear and indefinite since it is unclear how the hand can be positioned at a plus or minus 40 degree position, how the thumb compartment can be rotated forward in a plus or minus 20 degree position, how the angle between the thumb and index finger be fixed at an angle of plus or minus 90 degrees and how the opening for the hand into the mitten can be aligned at an angle of plus or minus 40 degrees and still ensure proper

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closing leverage of the glove. Also, it appears that the recitation "a thumb portion...of the mitten" in lines 12-14 appear to be already cited in lines 8-9. Is this the same relationship or a completely different structural relationship. Furthermore, the claim cannot refer to the words "prior art" in the claim language.

With regard to claim 2, the claim recites the limitation "the thumb slot and nearest finger slot" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

With regard to claim 3, the claim recites the recitation "said portion" in line 2. Does this recitation refer to the finger portion or to another portion of the glove.

### *Claim Rejections - 35 USC § 102*

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Latina '176 and '219.

Latina discloses a fielding glove (Figure 1) comprising an outer shell C having at least one finger portion (Figure 1), a thumb portion (Figure 1), a web (A, area between index finger and thumb) joining the thumb portion and the nearest finger portion and a leather mitten shaped compartment holding the four fingers and positioned and fixed upon the outershell of the glove.

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The finger portion of the mitten is aligned at an angle of plus or minus 40 degrees in relation to the upright finger portion of the outershell of the glove, a thumb compartment of the mitten is rotated forward in a plus or minus 20 degree arc from the plane of the finger portion, a fixed angle of plus or minus 90 degrees between the thumb compartment and the index finger is formed and a web/pocket area of the outershell is formed between the index finger portion and thumb. As stated above, the claim does not clearly state how the plus or minus recitations define over the prior art but instead the recitations leave it open for interpretation with respect to the orientation the outershell is in with respect to the mitten compartment. Therefore, Latina '176 and '219 disclose the invention substantially as claimed.

With regard to claim 7, the web D conforms to a curved plane in the space between the thumb and nearest finger (Figures 1 and 2 of Latina '219).

*Claim Rejections - 35 USC § 103*

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Latina '219 in view of Synek.



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Latina discloses the invention substantially as claimed. However, Latina does not disclose a web having a donut shaped disk centered in a valley between the thumb and finger compartments with straps attached to the disk radiating out from the circumference of the disk in a star pattern and attaching to various points along the edges of the thumb and index finger and to a strap that bridges the tips of the thumb and nearest finger. Synek teaches a fielding glove 10 comprising a web 14 having a donut shaped disk 28 centered in a valley between the thumb and finger compartments (16, 19) with straps 34 attached to the disk 28 and radiating out from the circumference of the disk 28 in a star pattern (Figure 1) and attaching to various points along the edges of the thumb and index finger (16, 19) and to a strap 32 that bridges the tips of the thumb and nearest finger (Figure 2). This web 14 enhances a player's ability to catch the ball since the web 14 is inherently flexible and readily collapses when the ball is received in the web (Col. 1, lines 51-61). It would have been obvious to one of ordinary skill at the time the invention was known to replace the web assembly of Latina with a web assembly 14 as taught by Synek in order to enhance a player's ability to catch a ball by providing a web that is inherently flexible and readily collapses when the ball is received in the web.

### *Conclusion*

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Welch whose telephone number is (703) 305-0451. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, can be reached on (703) 305-1025.

glw

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
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December 5, 2000